

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RITA CUMMINGS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-752-MJR
	)	
POLICE OFFICER MATT WITT, POLICE	)	
OFFICER TODD WAGNER, POLICE	)	
OFFICER JOHN LAWSON, POLICE CHIEF	)	
BRAD BLACKORBY, CITY OF	)	
JERSEYVILLE, ILLINOIS, UNNAMED	)	
ILLINOIS STATE POLICE OFFICER (JOHN	)	
DOE), DIRECTOR LARRY TRENT AND	)	
THE STATE OF ILLINOIS,	)	
	)	
Defendants.	)	

**MEMORANDUM IN RESPONSE AND OPPOSITION TO**  
**PLAINTIFF'S MOTION FOR LEAVE TO FILE**  
**THIRD AMENDED COMPLAINT**

Now come the defendants, POLICE OFFICER MATT WITT, POLICE OFFICER TODD WAGNER, POLICE OFFICER JOHN LAWSON, POLICE CHIEF BRAD BLACKORBY and THE CITY OF JERSEYVILLE, ILLINOIS, by and through their undersigned attorneys, PIERCE LAW FIRM, P.C., and in opposition to plaintiff's Motion for Leave to File Third Amended Complaint, states as follows:

Plaintiff's current Complaint is a transparent attempt by plaintiff to rework the discovery schedule to obtain additional time to disclose experts when the plaintiff has already blown his disclosure deadline.

This matter originally had a deadline for the plaintiff to disclose experts of July 15, 2008. By joint motion of the parties, the Court granted a motion to reset deadlines and push back the trial date. In response to that, the parties entered into an agreed-to Joint Report and Scheduling

Order granting the plaintiff until October 1, 2008 to disclose experts. The agreed-to Order is attached hereto and incorporated herein by reference.<sup>1</sup>

Subject to that, the undersigned offered plaintiff an extension up to and including October 20, 2008 to disclose any and all opinion witnesses pursuant to Federal Rule of Civil Procedure 26. Plaintiff's counsel made numerous requests for additional time including going so far as to attempt to unilaterally revise the schedule to make it more favorable. Accordingly, the disclosure deadline would be October 1, 2008 as agreed to by the parties or October 20, 2008 if plaintiff had accepted the extension offered by defendants.

At the time the plaintiff filed her Motion for Leave to Amend the Complaint, no expert disclosures have been made by the plaintiff.

Plaintiff has filed these new counts, which are legally suspect, and if allowed would be the subject of a motion to dismiss.<sup>2</sup>

If this motion is allowed, it would most likely necessitate a revision of the schedule to allow defendants to respond to the complaint and obtain appropriate expert testimony. On the converse, however, plaintiff should not be entitled to ignore deadlines and then revise the schedule to their benefit. Plaintiff at no time has filed a motion for additional time to disclose experts nor would one be warranted. Plaintiff has had ample opportunity and three extensions and has failed to disclose any experts. As recently as last week, the undersigned conferred with the plaintiff's attorney and the parties were in agreement that October 20, 2008 was the deadline

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<sup>1</sup> In accordance with Document No. 42, the parties entered into an agreed-to Order as referenced by the attached but did not file the same with the Court. Also attached hereto is the e-mail colloquy between the undersigned and the plaintiff's counsel confirming that the parties were in agreement that this schedule was to be valid and enforced.

<sup>2</sup> Defendants note that the parties are not yet at issue. Defendants filed a motion to dismiss directed towards each of the plaintiff's prior complaints but have yet to receive a ruling from this Court.

for disclosing any experts. In the event this Court does grant the motion to amend, the Court should not allow the plaintiff to disclose any experts past the deadline of October 20, 2008 or, in the alternative, at least not disclose any experts to any issue which was pending prior to the deadline which has previously expired.

WHEREFORE, the defendants, POLICE OFFICER MATT WITT, POLICE OFFICER TODD WAGNER, POLICE OFFICER JOHN LAWSON, POLICE CHIEF BRAD BLACKORBY and THE CITY OF JERSEYVILLE, ILLINOIS, respectfully request that this Court enter an Order denying plaintiff's Motion for Leave to File Third Amended Complaint and for such other relief as this Court deems just and equitable.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2008, I electronically filed an MEMORANDUM IN RESPONSE AND OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT on behalf of the defendants, Matt Witt, Todd Wagner, John Lawson, Brad Blackorby and the City of Jerseyville, et al with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

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Respectfully submitted,

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